VERIFIED STATEMENT

OF

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POLICY DEPARTMENT

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

PETITION FOR ARBITRATION OF INTERCONNECTION RATES, TERMS AND CONDITIONS AND RELATED ARRANGEMENTS WITH ILLINOIS BELLTELEPHONE COMPANY PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 04-0469

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Issues: GT&C 7, 8, 9, 10, 11 & 14.

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I. INTRODUCTION

Q. Please state your name and business address.

A. My name is A. Olusanjo Omoniyi and my business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

Q. What is your occupation?

A. I am a Policy Analyst in the Telecommunications Division of the Illinois Commerce Commission (the "Commission").

Q. Describe your educational and professional background.

A. In 1987, I graduated from Southern Illinois University at Carbondale with a Bachelor of Arts degree in Cinema & Photography and a Bachelor of Science degree in Radio-Television. I obtained a Master of Arts degree in Telecommunications in 1990 and a Juris Doctor degree in 1994, also from Southern Illinois University at Carbondale. I am licensed to practice before the Supreme Court of Illinois, the United States District Court, of both the Central and Southern Districts of Illinois, and the United States Court of Appeals for the Seventh Circuit.

I have been involved in various aspects of the telecommunications industry for over a decade, including Internet development, systems integration, broadcasting, long-distance telephone service resale and telecommunications practice. I have been the owner, part-owner and legal advisor for an Internet access provider. I was one of the original founders of Internet Developers Association (IDA), which has now metamorphosed into the Association of Internet Professionals (AIP). I was co-founder and part owner of Bizhelp Services, a computer systems integration and Internet development business. Between 1996 and 1998, prior to my employment at the Commission, I was a reseller of pre-paid calling cards for Southern New England Telephone Company and an agent of a long distance telephone services reseller, TTE of Baltimore, Maryland. Upon my employment with the Commission, I divested all my interests in the telephony businesses, telecommunications-related law practice and removed all my business websites in order to avoid any potential conflict of interests. I am a member of a number of telecommunications professional associations.

Q. Can you describe the purpose of your testimony?

A. The purpose of my testimony is to present my analysis, findings and recommendations regarding six General Terms and Conditions ("GT&C") Issues in this docket. The parties, SBC Illinois (SBC) and MCI/WorldCom ("MCI") disagree on a number of issues related to the scope, duration of terms and implementation procedures to be included in the interconnection agreement. In the instant testimony, I will address the policy issues related to this docket by examining the GT&C issues, which are:

1. GT&C 7: How long should the Term of the Agreement be?

2. GT&C 8:

   a) (SBC) What terms and conditions should apply to the contract after expiration, but before a successor ICA has become effective?, and

   b) (MCI) If the parties are negotiating a successor agreement, should either party be entitled to terminate this agreement before the successor agreement becomes effective?

3. GT&C 9: What terms and conditions should apply to the contract after expiration, but before a successor interconnection agreement has become effective?

4. GT&C 10: Deposit:

   a) (MCI) Which party's deposit clause should be included in the Agreement?

   b) (SBC) With the instability in the current telecommunications industry is it reasonable for SBC Illinois to require a deposit from parties with a proven history of late payments?

5. GT&C 11: - What terms and conditions should apply in the event the Billed Party does not either pay or dispute its monthly charges?

6. GT&C 14: Which party's audit requirements should be included in the Agreement?

II. GT&C 7 - TERM OF THE AGREEMENT

Q. Please describe GT&C 7, Term of the Agreement: Section 7.2.

A. According to both MCI and SBC, the issue is how long should the Term of the proposed Agreement be, either five (5) or three (3) years? MCI wants a five-year agreement while SBC prefers a three-year agreement. In essence, the issue posed is: what is the appropriate period the agreement should remain in effect?

Q. Please describe MCI's position on this issue.

A. MCI contends that the term of the proposed Agreement should commence upon the effective date, which is upon approval by the Commission, and it should remain in effect for five (5) years after the effective date and continue in full force and effect until it is either superseded or terminated in accordance with this section. In addition, MCI argues that three-year terms have proven to be too short and an unnecessary drain on both the Commission's and carriers' resources. MCI further argues that a five-year term will provide the parties with the incentive to make only necessary amendments rather than engaging in "tooth-to tail" renegotiation.[1]

Q. Please describe SBC's position on this issue.

A. SBC disagrees with MCI's proposal for a five (5) year term on various grounds. First, SBC argues that the Federal Communications Commission's (FCC's) Rules issued with the First Report and Order, and

[1] See Master List of Issues –Illinois MCIm Negotiations, General Terms and Conditions – Decision Point List, 07/16/04, GT&C 7, pp. 6-7.

Rule 51.809 in particular, state that ILECs, like SBC, only have to make interconnection agreement terms and conditions available for a reasonable period of time, which SBC argues is three (3) years, after which it should continue in full force and effect on a month-to-month basis until it is either superseded or terminated in accordance with the requirements of this section.[2] Second, SBC believes its proposal sufficiently meets the needs of both the CLECs including MCI in this instance and SBC because, unlike MCI's proposal, it would not bind the parties to outdated terms and conditions as technology and the market advance. Finally, SBC contends that other state commissions have ruled on the term of agreements and held that a three-year term is appropriate for an interconnection agreement. For example, SBC points to a ruling regarding an agreement between MCI and SBC made by the Texas Commission on May 26, 2000.[3] Apart from the term length, SBC argues that if the agreement continues past the expiration or termination and neither party has given notice that it intends to terminate the agreement, then the agreement should continue on a month-to-month basis until either party give such notice.[4] SBC emphasizes it is only required to make an arrangement available for a certain period of time, because at that point the agreement becomes stale and either party should be able to give

[2] Id. at 6-7.

[3] *Id.,* SBC Illinois Preliminary Position cited Docket Nos. 21791 and 22441 of the Texas Public Utility Commission. Docket No. 21791 parties were Southwestern Bell Telephone Company and MCI WorldCom, while Docket No. 22441 parties were Southwestern Bell Telephone Company and Level 3 Communications

[4] See Master List of Issues –Illinois MCIm Negotiations, General Terms and Conditions – Decision Point List, 07/16/04, GT&C 7, pp. 6-7

notice of termination of the agreement, and negotiate a successor agreement[5].

Q. What is your recommendation regarding the parties' positions?

A. My recommendation is that the Commission should accept the three-year term proposed by SBC rather than the five-year term preferred by MCI.

Q. What are the reasons for your recommendation?

A. Looking at the various arguments offered by parties, it appears an appropriate policy will be to grant a three-year term agreement. There are three reasons for this position. First, a three-year term is adequate to provide an agreement that guarantees certainty to both carriers and would allow both parties to develop business plans on a long-term basis. Second, a three-year agreement would allow the parties to respond to changes in the marketplace in terms of technology, regulations both at federal and state levels and market conditions. Otherwise, the only means for addressing several changes that may occur during the term of a five-year agreement may be one or more amendments, which over time tends to augment the original agreement in a piecemeal, patchwork manner. Thus, while a five-year term will certainly provide the parties with a interconnection agreement of greater duration, the parties may likely be hindered by a term or condition that does not allow either or both of them to be able to reasonably and efficiently respond to market conditions. Finally, a three-year term agreement will also allow the Commission to

[5] Id.

respond to the market conditions as the telecommunications industry continues to evolve as a result of technological and regulatory changes. While a five-year term agreement may save the costs and resources of the carriers and Commission resources from arbitration and approval of interconnection agreements every three years, the ability to promptly respond to the market conditions is a far more important factor. This is all the more necessary, considering that technological change and regulations in the telecommunications industry are constantly in a state of flux. A three-year term agreement allows carriers to respond to changes in the marketplace faster than a five-year term. Therefore, I will recommend that these parties be granted a three-year term agreement.

III. GT&C 8 and GT&C 9 – POST-EXPIRATION CONDITIONS

Q Please describe GT&C 8, Post-Expiration Terms and Conditions, Sections 7.2, 7.7–7.10.

A. The parties hold opposing views, although with slight variations, on what terms and conditions should apply after expiration of this agreement, but before a successor interconnection agreement has become effective. The bone of contention between the parties is the need to spell out precisely the procedure for termination of an existing Agreement and renegotiation of a new Agreement.

Q. What is MCI's position on this issue?

A. According to MCI, the issue is, if the parties are negotiating a successor agreement, should either party be entitled to terminate this agreement before the successor agreement becomes effective?[6] MCI argues that if the parties are negotiating a successor agreement, neither party should be permitted to terminate this agreement, other than for material breach.[7] Furthermore, MCI contends that the parties should adhere to a termination process that mandates that an existing Agreement will continue in full force and effect, thereafter until either (i) superseded or (ii) terminated pursuant to the requirements in Section 7.2.[8]

Q. What is SBC's position on this issue?

A. SBC states that the Agreement should continue in full force and effect after the effective term expiration of the Term on a month-to-month basis thereafter until either (1) superseded or (2) terminated pursuant to requirements of Section 7.2.[9] Also, SBC added a requirement that:

> "If this Agreement continues in full force and effect after the expiration of the Term, either party may terminate this Agreement after delivering written notice to the other party of its intention to terminate this Agreement, subject to the survivability clauses contained herein."

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[6] See Master List of Issues –Illinois MCIm Negotiations, General Terms and Conditions – Decision Point List, 07/16/04, GT&C 8 and GT&C 9, pp. 8-13.

[7] *Id* at 8.

[8] *Id.*

[9] *Id.*

SBC argues that the Telecom Act of 1996 provides that the parties have a 135-day window to negotiate an interconnection agreement and another 135-day window for arbitration for a total of 270-day window for both negotiations and arbitrations.[10] SBC also argues that in spite of this, the Act did not spell out how both negotiations and arbitrations should be handled between the parties.[11] Also, SBC argues that the parties also have another 30 days for preparation, signature and filing of the agreement.[12] Thus, according to SBC, the parties have about 10 months before a new agreement is put in place.[13] SBC then contends that its language will prevent any confusion between the parties as to what the parties should expect with regard to renegotiations.[14] Finally, SBC maintains that its language also addresses what happens if a CLEC requests renegotiations and then withdraws such a request.[15]

Q. Did the parties agree on any part of this issue?

A. Yes. The parties agree on terms and conditions of the termination process. Both MCI and SBC accept that after the effective date of the Agreement, it will continue in full force and effect, thereafter until it is either (i) superseded or (ii) terminated pursuant to the requirements of Section

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id. at 9*

7.2.[16] Both parties agree in Section 7.2 that:“ no earlier than one-hundred eighty (180) days before the expiration of the term, either party may request that the parties commence negotiations to replace this Agreement with a superseding agreement by providing the other party with a written request to enter into negotiations.”[17]

Q. What is your recommendation regarding the parties’ positions?

A. Apparently both parties agree that the Agreement should continue to be in force and effect until a new agreement is in place. Staff supports this proposal because it ensures certainty and allows the parties to concentrate on providing services to customers without disrupting rates, terms and conditions for those services. However, SBC’s concern regarding the possibility of a CLEC requesting renegotiation and then eventually withdrawing such a request is, in my opinion, a serious concern. This is particularly problematic in a situation where the same CLEC then re-instates its request, a circumstance in which the existing agreement remains in force and effect well beyond a 10-month period. In the light of this possibility, I will recommend that this agreement should not be allowed to continue to be in force and effect for more than 10-month window after a notice of termination is served by one party on the other unless the parties notify the Commission they have agreed to continue to enforce its terms, rates and conditions. Turning to SBC’s proposal that

[16] *Id. at 11.*

[17] *Id.* at 8.

the term of the agreement will continue on a month-to-month basis after the initial term expires, I recommend that this proposal should be rejected.

Q. What are the reasons for your recommendation?

A. The issue of whether a successor interconnection agreement can be ironed out between the parties depends on a host of reasons such as the differences in the positions of the parties, the products and services the parties are offering or intend to offer, regulatory changes that might have occurred since the agreement became effective, changes in market conditions, the need to avoid repetitive negotiation, and the incentive of each of the parties to negotiate in good faith.[18] First, a situation in which there is no definite deadline for an existing agreement is not an appropriate situation particularly if the positions of the parties are far apart. The parties – or, perhaps, only one party – has little incentive to conclude negotiations, and the result is that the existing agreement will continue to be indefinitely in force even when the terms, rates and conditions may neither be appropriate nor justified. Second, in the telecommunications industry it is well known that product and service offerings change either as a result of technological change, changes in business plans of carriers and a host of other reasons. A situation where the parties do not have a deadline to incorporate those changes into interconnection agreements may not be in the carriers' interest or necessarily in the public interest. Thus, there is a need for a successor agreement to avoid using rates,

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[18] I do *not* suggest that lack of good faith on the part of either party is an issue here.

terms and conditions that may become onerous to either party, outdated and engender contentious relationship between the parties.

Third, the issue of repetitive negotiation is also not an ideal situation because of the costs of such undertakings to both the carriers and even the Commission’s resources. Repetitive negotiations in the long haul may actually be unfair to the party that finds itself having to face repetitive negotiations particularly when the party is a non-withdrawing party but at the same time is bound to repeatedly negotiate whenever the withdrawing party wants to renegotiate again. Thus, a deadline may actually be an incentive, if not a mandate, for parties to take necessary, appropriate and good-faith steps to secure a successor agreement within a reasonable period of time.

Finally, the Commission should reject SBC’s proposal that the agreement should be operated on a month-to-month basis after the expiration of the initial term. Considering the need to ensure certainty in the marketplace and the implementation of carriers’ business plans, it is not ideal to allow an interconnection agreement which addresses numerous products, services, technical, financial and administrative issues to be enforced on a month-to-month basis. This is because such a situation will put the resources of the carriers at risk as the interconnection agreement does not seem to encourage long term business planning. I recommend that the agreement remain in force and effect after its termination date, but that, in the event one party sends a notification of termination, it expire after a tenmonth period unless a successor agreement is approved by the Commission.

IV. GT&C 10 – DEPOSIT

Q Please describe GT&C 10, Deposit. Section 9.1, et. seq.

A. According to MCI, the issue is which party's deposit clause should be included in the Agreement?[19] However, according to SBC, the issue goes beyond inclusion of a clause; SBC states that with the instability of the current telecommunications industry, an additional issue is whether it is reasonable for SBC to require a deposit from parties with a proven history of late payments?[20]

In essence, looking at the parties' positions and perspectives, the main issue on the one hand is essentially twofold: First, what is the best means to reduce the risk of deposit requirements from becoming onerous or even punitive to the billed party? Second, the issue of deposit also requires that one takes into account the need to protect the billing party from exposure to financial losses as a result of the billed party's inability to pay or meet its financial obligations to the billing party regardless of the reason for such occurrence.

[19] See Master List of Issues –Illinois MCIm Negotiations, General Terms and Conditions – Decision Point List, 07/16/04, GT&C 10, pp. 13-17

[20] *Id. at pp.13-17.*

Q. What is MCI's position on this issue?

A. MCI contends that while each party has proposed a deposit provision, the proposals are fundamentally very different.[21] In summary, MCI's proposal incorporates guidance from a recent FCC decision on the subject of security deposits, which permits a party to charge a deposit based on the other party's failure to make timely payments under the interconnection agreement.[22] For Section 9.4, MCI wants a 6-month payment period for determining whether a deposit should be returned rather than the 12-month period proposed by SBC.

MCI argues that while "deposit requirements protect a party against the risk of non-payment by the other party" such "a commercially reasonable deposit requirement should not impose undue burdens on the party paying the deposit."[23] MCI contends that SBC's proposal includes onerous requirements and triggers that "are so broadly defined or ambiguous that they might be construed to require a party to pay a deposit even if that party were honoring its payment obligations under the ICA."[24] MCI also claims its proposal incorporates guidance from a Policy Statement issued by the FCC in response to a petition from Verizon to the FCC "to permit

[21] *Id, at 13.*

[22] MCI Ex. 3.0(Hurter), pp. 2-8.

[23] *Id.*at 3.

[24] Id.at 4.

local exchange carriers to revise the deposit requirements in their interstate access tariffs."[25] MCI also maintains that SBC's proposal contains inconsistent terms and conditions which will lead to onerous enforcement.

Q. What is SBC's position on this issue?

A. SBC agrees that each party's positions is fundamentally different, but contends that its deposit language is more appropriate.[26] SBC offers deposit language that allows it to assess a reasonable deposit in the event that a CLEC customer is or becomes credit-impaired.[27] According to SBC, the criteria that would trigger a deposit requirement are all objective and measurable.[28] SBC contends that it is not aware of any recent FCC ruling that addressed the issue of CLEC deposits.[29] While it agrees with MCI that the failure to make timely payments should trigger a deposit requirement SBC believes additional safeguards are also required.[30] SBC also cites the fact that it was exposed to financial loss as a result of MCI's bankruptcy as a reason for the need to safeguard against such an occurrence.[31] SBC contends that this fact is particularly salient because it was aware of MCI's deteriorating financial condition period, particularly as

[25] Id. at 4.

[26] See Master List of Issues –Illinois MCIm Negotiations, General Terms and Conditions – Decision Point List, 07/16/04, GT&C 10, pp. 13-17.

[27] *Id* at 13.

[28] *Id.*

[29] *Id.at14.*

[30] *Id.*

[31] *Id.*

measured by independent credit ratings agencies during the period prior to MCI’s filing for bankruptcy protection, but was unable to request a deposit from MCI during this period because the existing agreement did not provide for such action.[32]

With regard to individual parts of Section 9, SBC addresses each section. For Section 9.1, SBC believes that assessing a deposit based on an individual billing account number would be both administratively burdensome and also could lead to the inappropriate movement of services between billing account numbers.[33] SBC contends that deposits should be assessed on an overall customer basis.[34] SBC also argues that allowing 30 days after the invoice due date before deeming a payment late is not appropriate because, invoices are due 30 days from invoice date and it should be considered late if payments are not made in that timeframe.[35] Otherwise, invoices will need to be unpaid 90 days past the invoice date in order to trigger the deposit requirement under MCI’s proposal. For Section 9.2, SBC argues that a one-month deposit is inappropriate given the length of the disconnection process. Under the proposed termination process, SBC believes it will be exposed to potentially providing 90 days of service to MCI prior to being able to

[32] *Id.*

[33] *Id.*

[34] *Id.at 15.*

[35] *Id.*

disconnect MCI and because of this a one-month deposit is not sufficient protection against the risk of non-payment.[36]

For Section 9.3, SBC believes that the appropriate interest rate to be paid on deposits should be equal to the state tariffed rate as approved by the Illinois Commission.[37] For Section 9.4, SBC believes that 12 months of good payment history is a more appropriate gauge for determining whether a deposit should be returned.[38] For Section 9.5, SBC does not believe that a corporate guarantee provides sufficient protection against nonpayment particularly in today's business environment where a company's fortunes can change quickly.[39] For Section 9.7, SBC believes that deposits that are retained should be applied at the holder's discretion.[40]

Q. What is your recommendation regarding the parties' positions?

A. Although, the circumstances are different just as the parties, I recommend that the Commission look at a number of sources to resolve the issue of deposit and assurance of payment. First, I recommend that the Commission look at its previous approach in how a similar issue was addressed in its Level 3 Arbitration Decision, although the CLEC and its

[36] *Id.*

[37] Id. at 16.

[38] *Id.*

[39] *Id.*

[40] *Id at 16-17.*

relationship with SBC were different from this docket.[41] Second, the Commission might also consider the Deposit Policy Statement of the FCC to which MCI refers, because the FCC Policy Statement was recently developed following arbitration proceedings between a number of CLECs, of varying degrees of characteristics and business relationship, and Verizon in consolidated dockets.[42]

While both parties appear to accept the notion that deposits are acceptable, I recommend SBC's position with some modifications. These modifications are necessary in order to account for MCI's concerns that it should not be saddled with disproportionately high deposits and advance payment demands from SBC. These concerns are legitimate given that based on SBC's proposal, SBC is permitted, in some circumstances, to take unilateral action.

Q. What are the reasons for your recommendation?

A. As shown in the positions of the parties, both of them agree on the purpose and necessity of deposit requirements. However, SBC's position that it needs deposits and assurances of payment is reasonable because it has a legitimate business interest that is based upon its historical experience in dealings with MCI. First, according to SBC, it had incurred financial loss as a result of MCI's bankruptcy. Second, SBC was exposed

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[41] *Level 3 Arbitration Decision at 13-17*, Level 3 Communications, Inc.: Petition for Arbitration Pursuant to Section 252 (b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, ICC Docket No. 00-0332 (August 30, 2000)(Level 3 Arbitration Decision)

[42] MCI Ex. 3.0 (Hurter), p. 4

to those financial losses as a result of the bankruptcy, largely because there was no mechanism in place prior to MCI's bankruptcy to protect SBC from significant financial losses. Further, there are other going forward reasons why the deposits and assurances of payment SBC seeks in this situation are necessary. Currently, there is a need to re-establish a new relationship (i.e., a post-bankruptcy business relationship in this instance) between MCI and SBC in which both parties can impose safeguards to address both the realities of the post-bankruptcy financial needs of both carriers. There is also a possibility that another carrier may want to opt-in to this agreement and SBC will be bound to accede to such request, even though the history between such requesting carrier and SBC may be vastly different from that of MCI and SBC. That is, the Commission should not impose on SBC a requirement with respect to MCI that it would not impose on SBC with respect to other carriers. To do so, might well lead to a discriminatory outcome.

Q. What are the modifications that should be made to the parties' proposals?

A. In order to adequately address the concerns of both parties, I will recommend that the Commission accept parts and should reject parts of MCI and SBC proposals. First, the four bases proposed by both parties that could trigger a demand assurance of payments enumerated in Sections 9.2.1 to 9.2.4 should be accepted. These are fairly reasonable objective grounds. Also, I will recommend that in Section 9.3, Sections 9.3.1 and 9.3.2 as proposed should be accepted as forms of assurance of payment. However, I will recommend Section 9.3.3 be rejected, as it is currently written, because it is in conflict with Section 9.10, as MCI pointed out. SBC proposes three (3) months worth of billing in Section 9.3.3 but then proposes *four* (4) months worth of billing in Section 9.10, even though the triggers for the deposits are the same. There is a need for consistency regarding what specifically the requested deposit should be, either three (3) or four (4) months; otherwise, SBC may arbitrarily determine how many months should apply depending on whatever triggers may apply. I believe this is inconsistent and may lend itself to abuse which, in turn may even impede competition because in this instance, MCI is not only a customer of SBC but also a competitor.

V. GT&C 11–NON-PAYMENT AND DISCONNECTION

Q Please describe GT&C 11, Non-payment and Procedures for Disconnection. Section 10, et. seq.

A. This issue, restated is: what terms and conditions should apply in the event the billed party does not either pay or dispute its monthly charges?[43]

Q. What is MCI's position on this issue?

A. MCI offers the following language:

> If the billed party fails to pay all amounts due by the bill due date, and none of the exceptions listed in appendix invoicing of this agreement apply to that amount, the billing party may, in addition to exercising any other rights or remedies it may have under this agreement or

[43] See Master List of Issues –Illinois MCIm Negotiations, General Terms and Conditions – Decision Point List, 07/16/04, GT&C 11, pp. 17-18.

> applicable law, provide written demand (in accordance with the notice requirements set forth in the general terms and conditions) to pay. If the billed party does not respond to the written demand to pay within five (5) business days of receipt, the billing party may provide a second notice. If the billed party does not satisfy the second written demand to pay within five (5) business days of receipt, and the Billed Party has 60 days or greater past due balances for a BAN to which none of the exceptions listed in Section applies, the Billing Party may exercise either; or both, of the following options as to that BAN only: (i) require provision of a deposit or increase an existing deposit pursuant to a revised deposit request, or (ii) refuse to accept new, or complete pending, orders for the services billed in that BAN.[44]

MCI did not specifically address these terms and conditions in detail, but it merely stated that the proposal is "fair and provides the parties with the proper incentives," which it urged the Commission to include in its agreement.[45]

Q. What is SBC's position on this issue?

A. SBC also did not directly address the terms and conditions associated with this issue; rather it chose to explain its recently implemented standard bill dispute technical process by which CLECs dispute their bill via the Local Service Center (LSC), which apparently administers SBC's online billing dispute process.[46] However, SBC maintains that it is asking all CLECs, including MCI to utilize this process so that their billing disputes are loaded and tracked properly in SBC's systems.[47] According to SBC, this avoids the potential for suspension of new order processing or

[44] *Id.* at 17-18.

[45] MCI Ex. 3.0 at 12.

[46] See Master List of Issues –Illinois MCIm Negotiations, General Terms and Conditions – Decision Point List, 07/16/04, GT&C 11, pp. 17.

[47] *Id.* at 17.

disconnection of facilities for those bills that MCI has properly disputed.[48] SBC states that its systems and personnel will recognize that the unpaid amounts are disputed amounts.[49] Further, SBC contends that if MCI does not go through the standard process, it is extraordinarily difficult to track what MCI has disputed and what it has not.[50]

Q. What are your recommendations regarding the parties' positions?

A. While each party feels it has a fair proposal, avoiding potential financial losses is a legitimate business reason for SBC to disconnect service to MCI. However, the request by SBC that everything relating to this issue be initiated through what it terms to be the new standard billing dispute process should be rejected. This is because SBC seems to be subsuming the issue in its technical procedures, instead of providing details on how it intends to implement Section 10 of the agreement, which appear to me to be different matters. I recommend that the Commission reject SBC's proposed approach to lodging a billing complaint. SBC should be required to allow MCI to use a dispute processing method that guarantees prompt and efficient filing and resolution of complaints even if such procedures include both LSC and other methods. Furthermore, attention should be focused on whether the terms and conditions are complied with by the parties rather than focusing on the technical process of lodging and logging complaints.

[48] *Id.*

[49] *Id.*

[50] *Id.*

Turning to the terms and conditions at issue, I recommend the Commission accept SBC's proposal which states that, "failure to pay all or any portion of any amount required to be paid may be grounds for suspension or disconnection of resale services, network elements and collocation as provided for in this section."[51] This language, it appears, is qualified by the next sentence, which sets forth circumstances in which the suspension or disconnection will not be enforced. This seems to add clarity to when these terms and conditions are not applicable. For instance, the proposed language states that the "section does not apply to disputed charges and/or nonpayments arising from Appendix Reciprocal Compensation or Appendix Network."[52] Thus, disputed charges and nonpayments arising out of reciprocal compensation or network appendices will not lead to suspension or disconnection of services. This appears to be a reasonable proposal that should assure MCI that the ground rules for suspension or disconnection of services has some well-defined exceptions.

Q. What are your recommendations about the procedures for suspension or disconnection of services?

A. With regard to the procedures for disconnection, the terms proposed by MCI should be modified because as these terms appear unlikely to

[51] *Id.*at 17.

[52] *Id.*

actually lead to disconnection in the event of delinquency. For instance in Section 10.1, according to MCI a state of delinquency can only lead to two possible results:

(i) a request for an increase of the existing deposit as a result of a "revised deposit request" from SBC, or

(ii) refusal to accept new, or to complete pending orders.

However, SBC proposes a third option. The third result is that non-payment when such bills are not disputed charges should also lead to suspension or disconnection of services. I will recommend that the Commission accept this proposal along with the two preceding proposals by MCI. Thus, creating three circumstances under which there could be a suspension or disconnection of services.

VI. GT&C 14 – AUDIT REQUIREMENTS

Q Please describe GT&C 14, Selection of Audit Requirements Section 13, et. seq.

A. The issue is: which party's audit requirements should be included in the Agreement?[53] As described by both parties, the purpose of an audit is to evaluate the accuracy of a party's billing and invoicing regarding the services provided and purchased by the other party, through a review of the associated charges, books, records, data and other documents

[53] See Master List of Issues –Illinois MCIm Negotiations, General Terms and Conditions – Decision Point List, 07/16/04, GT&C 14, pp. 20-22.

relating to the period of contractual performance in this agreement.[54] In the process of performing such audits, the parties propose in this agreement to observe restrictions relating to proprietary information to protect documents and information exchanged for auditing purposes.[55] The parties also agree to ensure verification of compliance with any provision of this agreement.[56] The parties also propose to impose a 30-day written notice requesting an audit that shall be completed no later than forty-five (45) calendar days after the start of such audit.[57]

Q. What is MCI's position on this issue?

A. MCI contends that the audits should be done two (2) times each contract year for the purpose of evaluating the accuracy of the audited party's billing and invoicing.[58] According to MCI, the term contract year means a twelve (12) month period during the term of this agreement beginning from the effective date and each anniversary thereof.[59] MCI also argues that the scope of any audit should be limited to the services provided and purchased by the parties and the associated charges, books, records, data and other documents relating thereto for the period. MCI also wants the audit to occur between the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if

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[54] *Id.*

[55] *Id. at 20.*

[56] *Id.*at 21.

[57] *Id.* at 22.

[58] *Id*. at 21.

[59] *Id.*

no audit has been performed, the effective date) and (ii) the twenty-four (24) month period immediately preceding the date the audited party received notice of such requested audit.[60] Finally, MCI proposes that an audit shall begin no fewer than thirty (30) days after audited party receives a written notice requesting an audit and shall be completed no later than forty-five (45) calendar days after the start of such audit.[61]

Q. What is SBC's position on this issue?

A. SBC proposes that while the parties may audit each other's books, records, data and other documents, it should be done once each contract year. In essence, once every twelve (12) month period during the term of this agreement.[62] Also, SBC argues that the audit should be between the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the effective date) and (ii) the twelve (12) month period immediately preceding the date the audited party received notice of such requested audit.[63]

Q. What is your recommendation regarding the parties' positions?

[60] *Id.*

[61] *Id.*

[62] *Id.* at 21.

[63] *Id.* at 21-22.

A. I will recommend that the Commission permit the parties to audit each others' books, records, data and other documents two (2) times each contract year, and specifically at six months intervals. Also, in circumstances where both parties have chosen to mutually skip the auditing process, the parties should ensure that auditing should not be left undone longer than a twelve (12) period. This recommendation is an amalgam of MCI's and SBC's proposals. The parties' proposal that each observe proprietary safeguards in the auditing process should also be accepted.

Q. What are the reasons for your recommendation?

A. The reasons for the above recommendation is that auditing is necessary to assure both parties that the records regarding calls, routing and a host of others services they provide each other for billing purposes are reliable. Considering the fact that the smooth implementation of this agreement depends largely on bill payment and performance of other financial obligations between the parties, auditing should be permitted at regular intervals. Thus, an auditing process every 6-months which amounts to two audits every twelve (12) months is reasonable. This will ensure that recording and billing errors are caught in time and promptly addressed before billing becomes a significant dispute between the parties. Also, auditing at regular intervals, will help assure the parties that this agreement is being faithfully complied with and enforced. Furthermore, the parties will be in a better position to quickly address any potential recording disputes and, if necessary, modify any disputed recording errors, processes and procedures.

With regard to the issue of non-auditing period, there is a danger of over-reliance on unaudited records if the parties were to leave unaudited their records for MCI’s suggested period of twenty-four (24) months. Also, such a long period can engender a voluminous set of records that is likely to result in costly auditing in terms of financial, time and assignment of more technical and human resources by the parties.

Q. Does this conclude your testimony?

A. Yes.

VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, A. Olusanjo Omoniyi, do on oath depose and state that if called as a witness herein, I would testify to the facts contained in the foregoing document based upon personal knowledge.

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SIGNED AND SWORN TO BEFORE ME THIS 31ST DAY OF AUGUST, 2004.

OFFICIAL SEAL
MARY ELLEN RUFFNER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 11/06/04

Mary Ellen Ruffner

NOTARY PUBLIC